

**EXHIBIT 1**

IN THE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

<b>SERAH DUNPHY</b> , on Behalf of Herself and on Behalf of Others Similarly Situated, Plaintiffs,	§	
v.	§	CA No. 4:17-cv-1225
	§	JURY DEMANDED
<b>PROJECT ARISTOCRAT LIFE FOUNDATION, WERUNTEXAS, LLC d/b/a MERCY, WE RUN HOU, LLC d/b/a ENGINE ROOM, JONATHAN REITZELL, STEVEN A. ROGERS, JOHN CARAVELLO, TANNER COX, AND MOHEED MARTINS, JR.</b>	§	
Defendants.	§	

**AFFIDAVIT OF GREGG M. ROSENBERG**

**STATE OF TEXAS**

'

**COUNTY OF HARRIS**

'

**BEFORE ME**, the undersigned authority, personally appeared **GREGG M. ROSENBERG** known to me to be a credible person who on his oath deposed and stated as follows:

1. "My name is **GREGG M. ROSENBERG**. I am over the age of eighteen and have never been convicted of a felony or of a misdemeanor involving moral turpitude. The facts stated below are based on my personal knowledge and are true and correct.
2. I am currently the principal in the law firm of ROSENBERG & SPROVACH. My business address is 3518 Travis, Suite 200, Houston, Texas 77002. I was retained by Plaintiff, Serah Dunphy and the other opt-in Plaintiffs in the above captioned lawsuit to pursue a collective action to recover unpaid wages due to them in accordance with the Fair Labor Standards Act ("FLSA").

**Gregg M. Rosenberg's Education and Experience**

3. I graduated from South Texas College of Law in 1985 and became licensed to practice law in the State of Texas in 1986. I am a member of the Texas Bar. I am licensed to practice before the United States District Courts for the Southern, Western, Eastern and Northern Districts of Texas, the United States Courts of Appeals for the Fifth, Ninth and Eleventh Circuits and the Supreme Court of the United States. I am Board Certified by the Texas Board of Legal

Specialization in the field of Labor & Employment Law. I served as Course Director for the 3rd Annual Advanced Employment Law Course, State Bar of Texas Professional Development and have been an active participant with the planning committees of other seminars dealing with the topic of employment law. I am a member of the Houston Bar Association and have served on the Labor & Employment Section as a council member. I was the Chairman of the Texas State Bar, Labor & Employment Section in 1993. I was also a member of the State Bar of Texas Pattern Jury Charge Volume IV Sub-Committee where I assisted in the drafting of proposed jury charges dealing with employment law issues.

4. I have been handling cases involving employees' disputes with their employers in many areas including, FLSA claims, employment discrimination claims, employment contract claims and non-competition agreement related litigation matters 1986. In the last thirty-two years, I have handled in excess of one thousand employment related cases (including multiple collective actions).
5. I have spoken at a significant number of seminars concerning employment discrimination law, and other employment related matters and I am familiar with the complexities of this type of litigation.

#### **Tracey D. Lewis' Education and Experience**

6. Ms. Lewis' practice focuses on all aspects of employment related matters, including prosecuting employment claims and defending such claims on behalf employers in state and federal courts. She received her J.D. from the University of the District of Columbia, David A. Clarke School of Law in 2011. She is currently licensed in New York and Texas.
7. Ms. Lewis' experience and qualifications are detailed further at rosenberglaw.com.

#### **Reasonableness of Billing Rates**

8. I am generally familiar with the compensation rates and billing practices of other attorneys in the Houston and Harris County area as well as the major populated areas in the state of Texas including Dallas, Tarrant, Bexar, Travis and El Paso counties for this type of work.
9. This law firm has a forty percent (40%) contingency fee interest in this lawsuit. However, this affidavit is submitted in conjunction with my motion for attorneys' fees for work performed in filing Plaintiffs' Motions to Compel and to Enforce the Court's Order on Discovery. In connection with that Motion for Attorneys' fees, I provide my hourly billing rates as follows. My hourly rate is \$600 per hour. I am familiar with reasonable and customary rates charged by attorneys in the field of labor and employment law with varying levels of experience. My rate is in accord with that charged by attorneys with similar experience in Houston and Harris County for this type of work. Ms. Lewis' hourly rate of \$285 per hour is commensurate with the rate of other associates with her level of experience.

**Reasonableness of Time Billed**

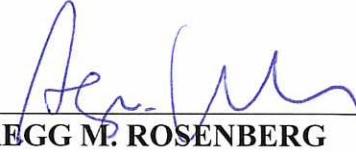
10. I have reviewed the invoice attached to this affidavit as Exhibit 1-A which shows the time billed for research, drafting, conference and hearings (as required by the Court) in connection with Plaintiffs Motion to Compel, Second Motion to Compel and to Enforce Compliance with the Court's Prior Order on Plaintiffs' Motion to Compel Discovery Responses, and the Motion for Attorneys' Fees and Third Motion to Compel to Enforce Compliance with the Court's Prior Orders on Defendants' Discovery Responses. Based on my experience in handling cases of this type, I believe that the attorneys' fees as set forth above and in Exhibit 1-A attached to this affidavit are reasonable and that the legal services rendered were necessary.

**Calculation of Fees**

11. The fees related to drafting the Motions to Compel Discovery Responses (as listed herein) and preparation for and attendance of the related hearing is at least 8.7 hours totaling \$3,789.00 for both me and Ms. Lewis (invoices with specific time entries for each task are attached in Exhibit 1-A and are incorporated by reference).
12. The attorneys' fees incurred by Plaintiffs were reasonable and necessary.

**Factors Considered**

13. The fee structure charged by this firm is consistent with the rates charged by other attorneys of comparable experience in this District for this type of work. This fee structure is necessary to the prosecution of the case at bar and takes into consideration all of the factors enumerated in Texas Disciplinary rules of Professional Conduct 1.04, Section 9, Article X of the State Bar Rules. The following factors are taken into consideration in my assessment and opinion that the attorneys' fees charge in this case are reasonable:
  - a) The time and labor involved, the novelty and difficulty of the questions involved, and the skilled required to perform the legal services properly;
  - b) The likelihood that the acceptance of the particular employment will preclude other employment by this firm;
  - c) The fee customarily charged in and around the Southern District of Texas – Houston Division and Harris County for similar legal services;
  - d) The amount involved and the results obtained;
  - e) The time limitations imposed by the client or the circumstances;
  - f) The major and length of the professional relationship with the client;
  - g) The experience, reputation and ability of the lawyer or lawyers performing the services; and
  - h) Whether the fee is fixed or contingent on the results obtained or uncertainty of collection before the legal services have been rendered.
14. I have read the foregoing affidavit, and hereby swear that it is true and accurate based upon my personal knowledge.



GREGG M. ROSENBERG

SUBSCRIBED AND SWORN TO BEFORE ME, this the 23<sup>rd</sup> day of April 2019, which witness my hand and official seal of office.



Kristina M. Blanco  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

My commission expires: October 6, 2019



#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded, on this 23<sup>rd</sup> day of April 2019, to the following:

*Counsel of Record for Defendants*  
**WeRunTexas, LLC c/b/a Mercy, We Run  
Hou, LLC d/b/a Engine Room, Jonathan  
Reitzell, Steven A. Rogers, and Moheed  
Martins**

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/s/ Gregg M. Rosenberg  
Gregg M. Rosenberg